IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANDERS TRONSEN,	*	Case No. 3:08-CV-148
Plaintiff	*	JUDGE CARR
	*	
vs.	*	DEFENDANT'S REPLY BRIEF
TOLEDO-LUCAS COUNTY PUBLIC LIBRARY	*	Julia R. Bates Lucas County Prosecuting Attorney By: John A. Borell (0016461) Karlene D. Henderson(0076083) Assistant Prosecuting Attorneys Lucas County Courthouse, Suite 250 Toledo, Ohio 43624 Phone: (419) 213-2001 Fax: (419) 213-2011 E-mail: JABorell@co.lucas.oh.us Counsel for Defendant
Defendant	*	

I. STATEMENT OF THE CASE

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action. On January 22, 2008, this Court denied the plaintiff's motion for a temporary restraining order.

While not entirely clear, the plaintiff appeared to claim that his removal from the Library and subsequent temporary revocation of his library privileges violated his constitutional rights. He did NOT allege a due process or equal protection violation. Rather, he appeared to assert that the defendant's

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adoption of such a policy violated the First Amendment to the United States Constitution and the free speech clause of the Ohio Constitution. On January 22, 2008, the plaintiff's motion for a temporary restraining was denied.

The defendant filed a motion for summary judgment. This motion established that the defendant was entitled to judgment as a matter of law, since there was no evidence before the Court that the plaintiff's First Amendment rights were violated by the defendant.

The Court's Order denying the motion for a temporary restraining order also set a briefing schedule. Instead of following this Court's Order, the plaintiff filed a series of meaningless, and in most cases, incomprehensible, motions.[1] The defendant will consider these motions as a memorandum in opposition to defendant's motion for summary judgment.[2]

As noted previously, the various documents filed by the plaintiff are essentially meaningless. They consist primarily of "charts" of irrelevant cases.

II. STATEMENT OF THE FACTS[3]

The facts in this case are undisputed. Disruptive library patrons, such as the plaintiff, have become a significant problem for the defendant. In order to control the conduct of disruptive patrons and protect the rights and safety of Library staff and patrons, it has become necessary for the defendant to employ a 30 person security staff. This staff includes Lucas County Sheriff deputies and Toledo Police Officers.

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[1] These motions included the following: motion to reconsider(R.12), motion for restraining order(R.15), and motion for appointment of counsel(R.17).

[2] In addition to the pleadings cited above, the plaintiff filed a motion for review of prior case(R.14), addendum to memorandum to motion for review of prior case(R.19), and motion for federal reconsideration(R.22). Apparently, these "motions" seek some type of review by this Court of a previous state court action involving these parties. Lastly, the plaintiff has filed a motion to suppress and to sever judicial function. In this somewhat bizarre motion, the plaintiff engages in an explanation and defense of "recreational nudity" and requests that the Court "suppress" his email address and assign three different judges to various phases of this litigation. Obviously, the defendant does not need to respond to these motions.

[3] The only admissible evidence before this Court is the affidavit of Jeff Sabo and documents attached thereto. Thus,

It has also become necessary for the defendant to adopt a Code of Conduct which is entitled 'Eviction Procedures & Guidelines'. A copy of this policy was also attached to the defendant's memorandum in opposition to plaintiff's motion for a temporary restraining order.

On December 10, 2007, the plaintiff was at the main branch of defendant Toledo-Lucas County Library. He was using one of the public computer terminals. A woman patron was using the terminal next to the plaintiff.

The plaintiff handed the woman patron a note asking that if she "weren't involved with someone, would she email him at a nudity site". The female patron was extremely frightened by the plaintiff's ***conduct*** and notified the defendant's security personnel.

Library security personnel recognized the description provided by the patron as being the plaintiff. On December 19, 2007, the plaintiff was again at the main branch of the Library. He was recognized by security personnel and questioned about the December 10th incident. The plaintiff admitted that he handed the female patron the note in question.

On December 20, 2007, the plaintiff was notified in writing that his conduct violated the defendant's posted Code of Conduct and that his Library privileges were suspended for six months. The written notification also advised the plaintiff of his right to appeal this decision.[4] The plaintiff did not invoke the defendant's administrative appeal process.

The plaintiff has a long history of harassing library patrons and staff. His library privileges were previously suspended for harassing library patrons. The plaintiff filed an action in the Lucas County Common Pleas Court challenging the suspension and seeking injunctive relief. The Court denied the

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there are no disputed facts.

[4] The defendant's written Code of Conduct includes a procedure to challenge a decision the Code has been violated.

request for a temporary restraining order and a preliminary injunction. The Court subsequently granted the motions to dismiss that had been filed by all defendants.

On January 17, 2008, the plaintiff filed a pro se complaint alleging a violation of the First Amendment rights of free speech and expression of the United States Constitution and the free speech clause of the Ohio Constitution. The plaintiff also sought a temporary restraining order allowing him access to the public library during the pendency of this action.

While not entirely clear, the plaintiff appeared to claim that his removal from the Library and subsequent temporary revocation of his library privileges violated his constitutional rights. He does NOT allege a due process or equal protection violation. Rather, he appears to assert that the defendant's adoption of such a policy violates the First Amendment to the United States Constitution and the free speech clause of the Ohio Constitution. On January 22, 2008, the plaintiff's motion for a temporary restraining was denied.

The defendant filed a motion for summary judgment. The motion established that the defendant was entitled to judgment as a matter of law, since there is no evidence before the Court that the plaintiff's First Amendment rights were violated by the defendant.

As noted above, the plaintiff has filed a series of irrelevant and meaningless pleadings that do not in any way

III. LAW AND ARGUMENT

As noted in the defendant's motion for summary judgment, Plaintiff's complaint is premised on the claim that his temporary expulsion from the defendant library violated his free speech rights under the First Amendment the First Amendment to the United States Constitution.[5] Accordingly, this Court must initially

[5] The complaint also alleged a caused of action under the free speech clause of the Ohio Constitution. The Ohio

determine the existence and extent of such rights in a public library. *See Cornelius v. NACCP & Education Fund, Inc*., 473 U.S. 788, 797(1985).

While there is a First Amendment right of public access to information, this right, of course is not without limits. *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242, 1255(3d Cir. 1992). The state or its instrumentality may regulate access to and the use of its libraries. *Brown v. Louisiana*, 383 U.S. 131, 143(1966). The extent to which the government may limit this right of access depends on whether the forum in public or non-public. *Id.*

It is well-settled that Courts have refused to characterize the public library as a traditional public forum because library users are not allowed to engage in certain expressive conduct ordinarily associated with such forums. *Kreimer,* 958 F.2d at 1256. Therefore, a library is obligated only to permit the public to exercise rights that are consistent with the nature of a library and consistent with the government's intent in designating the library as a public forum but other activities need not be tolerated. *Kreimer,* 958 F.2d at 1262; *Neinast,* 346 F.3d at 591. Traditionally, libraries provide a place for reading, writing, and quiet contemplation. *Neinast,* 346 F.3d at 591 (quoting *Kreimer,* 958 F.2d at 1261). ***Indeed, the exercise of oral and interactive First Amendment activities is antithetical to the nature of a library***. *Kreimer,* 958 F.2d at 1261; *Mainstream Loudon, et al. v. Board of Trustees of the Loudon Public Library*, 24 F. Supp.2d 552, 563(E.D. Va. 1998).

In addition, regardless of the name of the forum, the First Amendment does not prohibit regulation of conduct. In *Kreimer,* the court held that a written rule governing conduct of a harassing or annoying nature was controlled by the reasonableness test because such restrictions are not aimed at activities which the government had specifically permitted in the library. *Kreimer*, 958 F.2d at 1263 n.24. Applying

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Supreme Court has held that the free speech clause of the Ohio Constitution, Section II, Article I, is no broader than the United States Constitution and the case law of the First Amendment is a proper basis for interpreting Ohio's free speech clause. *Eastwood Mall v. Slanco*, 68 Ohio St.3d 221, 626 N.E.2d 59(1994).

that test, the court concluded such a rule was "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library. *Kreimer,* 958 F.2d at 1263; *Leonard Brinkmeier v. City of Freeport*, Case No. 93 C 20039(N.D. Ill. July 2, 1993), 1993 U.S.Dist. *LEXIS* 9225.

In the present case, it is undisputed that the plaintiff's library privileges were temporarily suspended because of his harassment of another patron. Specifically, he handed a sexually suggestive note to a female patron who was a complete stranger to him. Clearly, the First Amendment does not protect such conduct. Additionally, the library clearly has a legitimate and fundamental interest in protecting library patrons from the type of disruptive and harassing conduct engaged in by the plaintiff.

Thus, it is clear that the plaintiff has failed to establish the defendant's temporary suspension of his library privileges did not violate the plaintiff's First Amendment rights. Therefore, the defendant is entitled to judgment as a matter of law.

IV. CONCLUSION

It is a reality of modern society that even public libraries must deal with disruptive patrons whose conduct does not comport with the purpose of a public library. An even more difficult problem is presented when the patron is like the plaintiff herein and has no understanding of the consequences of the disruptive behavior and, sadly, is completely oblivious to the rights of other library patrons.

If public libraries are to continue to provide a place for reading, writing, and quiet contemplation, they must have the ability to regulate disruptive patrons such as the plaintiff. Clearly, the First Amendment allows the defendant to adopt rules governing conduct of a harassing or annoying nature because such restrictions are not aimed at activities which the government had specifically permitted in the library. Courts have concluded that such rules are "fundamentally reasonable" because a prohibition against disruptive behavior is perhaps the clearest and most direct way to achieve maximum use of a public library.

Respectfully submitted

JULIA R. BATES
LUCAS COUNTY PROSECUTING ATTORNEY

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Assistant Prosecuting Attorneys
Counsel for Defendant

CERTIFICATION

A copy of the foregoing Reply Brief was sent by email the plaintiff on the 12th day of April 2008.

/s/ John A. Borell
John A. Borell
Assistant Prosecuting Attorney
Counsel for Defendant